IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5169/2005

(Ramji Upadhyay Vs. State of Rajasthan & Ors.)

Date of Order : 17/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Nitin Trivedi for the petitioner.

Mr. Ashok Upadhyay, Addl. Govt. Advocate for respondents.

BY THE COURT:-

Heard learned counsel for the parties.

By the instant writ petition, the petitioner has challenged the order dated 18.8.2005 Annex.7 whereby the petitioner has been placed under suspension.

A reply to the writ petition has been filed. Apart from denial of factual matrix of the case, the respondents came with a case that the order placing an employee under suspension is appealable and there being an alternative and efficacious remedy of appeal available and without exhausting the remedy of appeal and there being no reason to bypass such remedy, the petitioner has filed the instant writ petition.

The order of suspension is appealable under Rule 22 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 which provides that a Government servant may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order, is immediately subordinate. Thus, there is a statutory remedy of appeal provided to challenge the order of suspension and the remedy is efficacious in nature.

Learned counsel for the petitioner submits that the statutory remedy of appeal cannot be an absolute bar to entertain the writ petition. He has relied on a decision of Hon'ble Supreme Court in S.L.Kapoor Vs. Jagmohan and Others AIR 1981 SC 136 and a decision of Calcutta High Court in Shiva Anand Vs. Indian Airlines and Others 2003 (3) SLR, 187.

The instant writ petition has been filed assailing the order of suspension without availing the alternative remedy of appeal which is efficacious in nature. There are catena of decisions of Hon'ble Supreme Court holding that if there is statutory alternative remedy is provided, it cannot be permitted to be bypassed.

A Constitution Bench of the Hon'ble Supreme Court, in G. Veerappa Pillai Vs. Raman & Raman Ltd., AIR 1952 SC 192, held that if there is statutory remedy of appeal/revision available to a person, the writ jurisdiction should not be invoked in such

matters.

In C.A. Ibraham Vs. I.T.O., AIR 1961 SC 609 and H.B. Gandhi Vs. M/s. Gopinath & Sons, 1992 (Suppl.) 2 SCC 312, the Hon'ble Apex Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

A Division Bench of this Court, in Laxman Singh Verma Vs. State of Rajasthan & ors., 2000 (1) RLR 137, has considered this issue elaborately and after discussing large number of decisions of this Court and the Hon'ble Supreme Court in Gopilal Teli Vs. State, 1995 (1) RLR 1; Whirlphool Corporation Vs. Registrar of Trade Marks, AIR 1999 SC 22; Tin Plate Co. of India Ltd. Vs. State of Bihar, AIR 1999 SC 74; and Deepak Kumar Khinvsara Vs. Oil India Ltd., 1996 (1) RLR 95, came to the conclusion that writ should not generally be entertained if statute provides for remedy of appeal and even if it has been admitted, parties should be relegated to the appellate forum.

In Sheela Devi Vs. Jaspal Singh, (1999) 1 SCC 209, the Hon'ble Supreme Court held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

A Constitution Bench of the Hon'ble Supreme Court, in K.S. Rashid & Sons Vs. Income Tax Investigation Commission & ors., AIR 1954 SC 207, held that Article 226 of the Constitution confers on all the High Courts a very wide power in

the matter of issuing writs. The said power is limited. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

Again, a Constitution Bench of the Hon'ble Supreme Court, in Union of India & ors. Vs. T.R. Verma, AIR 1957 SC 882, held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The Apex Court held that existence of an another remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such remedy is exhausted, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds therefor.

Yet another Constitution Bench of the Hon'ble Supreme Court, in State of U.P. & ors. Vs. Mohammed Nooh, AIR 1958 SC 86, considered the scope of exercise of writ jurisdiction when remedy of appeal was there and held that writ would lie provided there is no other equally effective remedy.

Another Constitution Bench of the Hon'ble Supreme

Court, in State of Madhya Pradesh & Anr. Vs. Bhailal Bhai etc. etc., AIR 1964 SC 1006, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power.

In S.T. Mathuswami Vs. K. Natrajan & ors., AIR 1988 SC 616, the Hon'ble Supreme Court held that the High Court cannot be justified to exercise the power in writ jurisdiction if an effective alternative remedy is available to the party.

In Secretary, Minor Irrigation and Rural Engineering Service, U.P. & ors. Vs. Sangoo Ram Arya & Anr., AIR 2002 SC 2225, the Apex Court held that where the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a Government servant, the fact that the Tribunal had no authority to grant an interim order, would be no ground to by-pass the said Tribunal.

In this view of the matter, in my view, the impugned order of suspension is appealable under Section 22 of the CCA Rules.

The writ petition is, therefore, dismissed on the ground of availability of alternative remedy of appeal. However, it is open for the petitioner to file an appeal against the order of suspension before the appellate authority within a period of

fifteen days from today and if such an appeal is filed, the period of limitation will not come in the way of the petitioner since the petitioner has been prosecuting the matter before this Court and the appellate authority shall consider and decide the appeal in accordance with law within one month therefrom. Stay petition also stands dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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